



Proposed Regulation Agency Background Document

Approving authority name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9 VAC 20 – 85
Regulation title	Regulation Governing Management of Coal Combustion By-Products
Action title	Proposed Amendment 1- Fossil Fuel Combustion Products
Document preparation date	May 23, 2005

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

This regulation establishes procedures for the use, reuse and reclamation of coal combustion by-products (CCB). The regulation establishes appropriate standards for siting, design, construction and operation of projects using CCB.

The Virginia Solid Waste Management Regulations were recently modified to include provisions allowing fossil fuel combustion products, when mixed with CCB, to be used in the same manner as CCB. Provisions for fossil fuel combustion products should also be reflected in the regulation governing CCB as well.

Fossil fuel combustion products have previously been used under the current regulations through the submission of a variance application as allowed in 9 VAC 20-85-180. Updating the regulation to recognize fossil fuel combustion products will eliminate the need for a variance petition without detrimental impact to human health or the environment.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board (Board) to issue regulations as may be necessary to carry out its powers and duties required by the Virginia Waste Management Act (Act). Section 10.1-1402(5) of the Act authorizes the Board to promote the development of resource conservation and recovery systems. Virginia code §10.1-1402(1), and (11) state:

“The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth.“

...”11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable. “

Section 10.1-1406.2 contains provisions for exemptions pertaining to the use of coal ash at facilities regulated by DMME.

The regulation provides special provisions for the proper use and placement of CCB, or coal ash, which is one of the numerous solid wastes otherwise covered in the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) (VSWMR).

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulation establishes procedures for the proper management of coal combustion by-products (CCB) in construction projects. The regulations govern the use, reuse and reclamation of coal combustion by-products (CCB). The regulations establish appropriate standards for siting, design, construction and operation of projects using CCB.

The regulation allows for the use of CCB in structural fills and mined land reclamation projects. It establishes minimum standards for all persons who use, reuse, or reclaim the CCB by applying it or placing it on the land and to owners and operators of coal mining facilities that accept CCB for mined land reclamation or mine refuse disposal on sites permitted by the Virginia Department of Mines Minerals and Energy (DMME). The regulation contains provisions regarding the siting of projects, the design and

construction of run-off and cover systems, and closure of projects involving CCB. It also provides minimum requirements for operation of the site.

The Virginia Solid Waste Management Regulations were recently modified to allow fossil fuel combustion products when mixed with CCB to be used in the same manner as CCB. Provisions for fossil fuel combustion products should also be reflected in the regulations governing CCB as well.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

Definitions of "fossil fuel combustion products" and "waste derived fuel product" have been incorporated into the regulations.

References contained within the regulation to the use of "coal combustion by-products" and "fossil fuel combustion products" under the provisions of the other regulations including the VSWMR have been updated where necessary.

The compaction specifications in Section 90 have been eliminated and the regulations have been modified to require the placement of fossil fuel combustion products as specified by a professional engineer. Section 80 has been modified to require the submission of the engineering specifications as part of the application package. Section 120 has been modified to require documentation that materials have been placed according to the specification in the final site report.

The administrative requirements in Section 150 have been updated to provide a completeness review and approval of the submission by the department.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

1) By implementing these regulatory provisions, both the Coal Combustion By-Product Regulations and the Virginia Solid Waste Management Regulations will allow the use of fossil fuel combustion products in a consistent manner.

2) The advantages to the Commonwealth include allowing the use of ash from fossil fuel combustion products in the same manner that coal combustion by-products are used and eliminate the need for a variance petition to use fossil fuel combustion products under the provision of this regulation. In addition, the regulation promotes the use of waste materials and helps preserve landfill space.

Requirements More Restrictive Than Federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

NA

Locality Particularly Affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

NA

Public Participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest land preservation.

The Board is seeking comments from the general public on the following:

The elimination of the compaction specification requirements (in 9 VAC 20-85-90.4) as well as the elimination of a specific field compaction testing frequency is being considered. DRAFT language has been provided in the proposed regulation. The Board will consider the substitution of these more general requirements indicating that compaction and testing will be as specified by a registered professional engineer.

The "General" requirements of the regulations in 9 VAC 20-85-150 state that the director must be provided with a general description of the use, re-use or reclamation of the CCB including a description of the nature and purpose and location of the CCB site. CCB sites have been approved in the past for real estate improvement projects including building footprints, site contouring, roadway and embankment construction, improving site topography and creating developable land. Should the regulations include allowable uses for fossil fuel combustion products or is the general language of the section sufficient?

The Board is also considering the possibility of eliminating the regulation and placing all provisions of the regulation into the Virginia Solid Waste Management Regulations (VSWMR). The possibility of removing the provisions addressing coal ash from the VSWMR and consolidating the provisions in this regulation is being examined. Comments are requested regarding each of the two alternatives. Is one alternative more burdensome than the other?

In addition, the Board is seeking comments on the costs and benefits of the proposal and on any impacts of the regulation on farm and forest land preservation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to Michael J Dieter, P.O Box 10009, Richmond, Virginia 23240-0009, ph: (804) 698-4146, fax: (804) 698-4327, mjdieter@deq.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on the date established as the close of the comment period.

A public hearing will be held and notice of the public hearing can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	Since the regulations were introduced in 1995, six (6) CCB projects have been approved by DEQ.
Projected cost of the regulation on localities	NA
Description of the individuals, businesses or other entities likely to be affected by the regulation including specific information on the impact on small businesses as defined in § 2.2-2279	The individuals and businesses affected by the regulation include those that wish to use ash in the development of a site. The proposed modification to the regulations will also allow fossil fuel combustion products to be used in the same manner as CCB. Sites that burn fossil fuel combustion products and coal will not be required to obtain a variance to the regulations to use the materials allowed under the provisions of the regulation.
Agency’s best estimate of the number of such entities that will be affected	Since the regulations were introduced applications have been received for an average of 1 project per year. 6 projects have been approved by the department since the regulations were introduced.
Projected cost of the regulation for affected individuals, businesses, or other entities	Based on the changes made to the regulation there is no anticipated difference in the cost of the regulation for affected individuals, businesses or entities. Variance applications and associated processing including advertisement and preparation could cost as much as \$1,000-2,000. Allowing fossil fuel combustion products to be used in the manner proposed in the modification to the regulations will eliminate the need for a variance.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The Board is also considering the possibility of eliminating the regulation and placing all provisions of the regulation into the Virginia Solid Waste Management Regulations (VSWMR). In addition, the possibility of removing the provisions addressing coal ash from the VSWMR and consolidating the provisions in this regulation is being examined.

The Board is considering the elimination of the compaction specification requirements (in 9 VAC 20-85-90.4) as well as the elimination of a specific field compaction testing frequency. The Board will consider the substitution of more general requirements indicating that compaction and testing will be as specified by a registered professional engineer based on the intended use of the fossil fuel combustion products.

Lab testing of the compaction characteristics of the fossil fuel combustion products followed by field testing ensures that the ash is being placed in a uniform manner and can support overlying structures and other appurtenances.

Proper placement of fossil fuel combustion products provides the following benefits:

- Compaction stabilizes the ash so it is less likely to be effected by erosion by the wind and rain.
- Proper compaction of the ash allows the ash to perform structurally.
- Structural performance of the ash will ensure that the site can support building and roadways when the site is developed initially and for construction activities that take place in the future.

Public comment

Please summarize all public comment received during 30-day period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Dominion	Supports changes to allow the management of fossil fuel combustion products in the same manner as CCB	None
Full Circle Solutions	Supports changes to allow the management of fossil fuel combustion products in the same manner as CCB	None

Dominion
 Pamela F. Faggert
 Vice President and Chief Environmental Officer
 5000 Dominion Boulevard
 Glen Allen, VA 23060

Full Circle Solutions
 Robert J. Waldrop
 Vice President
 665 Molly Lane, Suite 100
 Woodstock, GA 30189

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulations protect the public’s health, safety and welfare and the environment from harmful results of the mismanagement of coal combustion by-products. However, the Regulations Governing the Management of Coal Combustion By-products has no other direct impact on the institution of the family.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number 9 VAC 20-85-	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
20		Definition “CCB Site”	Removed and replaced with a definition of “fossil fuel combustion products site”
20		None	“Coal combustion by-products” definition consistent with the definition appearing in 9 VAC 20-80-10 provided.
20		None	“Fossil fuel combustion products” definition consistent with the definition appearing in 9 VAC 20-80-10 provided.
20		None	“Waste derived fuel products” definition consistent with the definition appearing in 9 VAC 20-80-10 provided.
30, 40, 60, 70, 80, 90, 100, 110, 120, 130, 140, 150, 160, 170		None	Added the term fossil fuel combustion products to allow fossil fuel combustion products and CCB to be used in the same manner.
40 A		None	References the beneficial use and conditional exemptions allowing the use of fossil fuel combustion products from the solid waste regulations.
80		Provides specific compaction requirements in	Requires the submission of construction specifications as part of the application

		9 VAC 20-85-90.4	package for a site using fossil fuel combustion products.
90.4		Provides specific compaction requirements.	Requires compaction of ash to standards specified by a registered professional engineer.
120		Provides specific compaction requirements in 9 VAC 20-85-90.4. Also the section requires the submission of a report indicating that closure has been performed.	Requires the submission of a certification and a report indicating that construction has been completed according to plans, specifications and the design report.
150	150 B	None	Adds evaluation for completeness by the department within 30 days of submission.